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COYNESS L. ENNIX, JR., M.D.

18 UNITED STATES DISTRICT COURT  
19 NORTHERN DISTRICT OF CALIFORNIA

20 COYNESS L. ENNIX, JR., M.D., as an  
21 individual and in his representative capacity  
22 under Business & Professions Code Section  
17200 et seq.,

23 Plaintiff,

24 v.

25 RUSSELL D. STANTEN, M.D., LEIGH I.G.  
26 IVERSON, M.D., STEVEN A. STANTEN,  
M.D., WILLIAM M. ISENBERG, M.D.,  
27 Ph.D., ALTA BATES SUMMIT MEDICAL  
CENTER and does 1 through 100,

28 Defendants.

CASE NO. C 07-2486 WHA

**CONFIDENTIALITY  
STIPULATION AND [PROPOSED]  
PROTECTIVE ORDER**

**JUDGE:** Hon. William H. Alsup

**COMPLAINT FILED:** May 9, 2007  
**TRIAL DATE:** None set

1 WHEREAS, on April 3, 2007, Plaintiff Coyness L. Ennix, M.D. ("Plaintiff")  
2 commenced an action in the Superior Court of California for the County of Alameda  
3 entitled *Coyness L. Ennix, Jr., M.D., as an individual and in his representative capacity*  
4 *under Business & Professions Code § 17200 et seq. v. Russell D. Stanten, M.D., Leigh*  
5 *I.G. Iverson, M.D., William M. Isenberg, M.D., Ph.D., Alta Bates Summit Medical Center*  
6 *and does 1 through 100* (Case No. RG 07318658) (the "State Court Action");

7 WHEREAS, on May 9, 2007, Plaintiff commenced the above-entitled action  
8 in the United States District Court for the Northern District of California;

9 WHEREAS, on May 10, 2007, Plaintiff voluntarily dismissed the State  
10 Court Action without prejudice;

11 WHEREAS, Defendants Alta Bates Summit Medical Center ("Alta Bates");  
12 Leigh I.G. Iverson, M.D.; Russell D. Stanten, M.D.; Steven A. Stanten, M.D.; and William  
13 M. Isenberg, M.D., Ph.D., (collectively, "Defendants") intend to respond to the Complaint  
14 within the time period allowed by law;

15 WHEREAS, the parties will be exchanging discovery materials throughout  
16 this litigation through their initial disclosures and pursuant to their respective discovery  
17 requests in this action; and

18 WHEREAS, the parties have agreed that Plaintiff will be deposed on May  
19 25 and May 26, 2007 pursuant to a deposition notice served in the State Court Action, at  
20 which time confidential discovery materials may be exchanged, and

21 WHEREAS, the parties' discovery materials may contain information of a  
22 personal, confidential, or proprietary nature or which may be otherwise protected from  
23 disclosure by public policy, third-party privacy or confidentiality interests, or state and/or  
24 federal law;

25 IT IS THEREFORE STIPULATED that:

26 1. This Confidentiality Stipulation and Protective Order ("Stipulated  
27 Protective Order") shall govern the production and disclosure of information through the  
28 discovery and pretrial processes. This Stipulated Protective Order is not intended to

1 govern at trial. The parties will cooperate in establishing procedures acceptable to the  
2 Court with respect to the protection of information designated as "CONFIDENTIAL" or  
3 "ATTORNEYS' EYES ONLY" pursuant to this Stipulated Protective Order at any trial and  
4 upon any appeal of this case.

5           2. For purposes of this Stipulated Protective Order, "Discovery  
6 Materials" shall include documents, responses to FRCP Rule 33 and Rule 34 requests,  
7 deposition testimony, and all other information that may be disclosed by the parties in  
8 the course of discovery in this action, as well as compilations or excerpts of such  
9 materials. "Discovery Materials" shall also include any documents or information, as well  
10 as compilations or excerpts of such materials, which either party seeks to file with the  
11 Court regardless of whether such documents or information are the subject of a pending  
12 discovery request.

13           3. The parties anticipate there will be significant discovery disputes  
14 regarding the production of documents and information concerning the record of peer  
15 review, quality or credentialing processes or proceedings of Alta Bates or of its Medical  
16 Staffs, or of incident or other reports leading to such peer review, quality or credentialing  
17 processes or proceedings. This Stipulated Protective Order does not concede, abrogate  
18 or diminish, and shall not be construed to concede, abrogate or diminish, the application  
19 of California Evidence Code section 1157 ("Section 1157") to discovery concerning the  
20 peer review, quality or credentialing processes or proceedings and records of Alta Bates  
21 or of its Medical Staffs. Nor shall this Stipulated Protective Order operate as a waiver of  
22 either party's right to contest the application of Section 1157 in this litigation. This  
23 Stipulated Protective Order shall not abrogate or diminish any other privilege, or any  
24 contractual, statutory or other legal obligation or right of any individual with respect to  
25 Discovery Materials.

26           4. Any party may identify Discovery Materials it deems to be entitled to  
27 protection under this Stipulated Protective Order by designating such Discovery  
28 Materials as "CONFIDENTIAL" or "ATTORNEYS' EYES ONLY". Any such designation

1 shall be made in good faith and Discovery Materials so designated shall be marked  
2 "CONFIDENTIAL" or "ATTORNEYS' EYES ONLY".

3 5. In the event that a party makes documents available for inspection  
4 rather than delivering copies to another party, no marking need be made in advance of  
5 the initial inspection. However, the counsel producing the documents shall notify the  
6 inspecting counsel of the documents which the producing party considers either  
7 "CONFIDENTIAL" or "ATTORNEYS' EYES ONLY", and the inspecting counsel shall  
8 respect such designation pending production and marking of the documents.  
9 Deposition transcript pages may be designated "CONFIDENTIAL" within two weeks of  
10 receipt of the transcript, and shall be deemed to have been designated  
11 "CONFIDENTIAL" in their entirety until those two weeks have elapsed. Testimony may  
12 also be designated on the record of any deposition as "CONFIDENTIAL."

13 6. Unless a patient agrees otherwise, any patient-identifying  
14 information (as defined by state and federal law) shall be fully redacted from all written  
15 material produced or filed in this case. In addition, the parties and their counsel agree to  
16 employ their best efforts to avoid disclosing any patient-identifying information in  
17 testimonial form and that, to the extent feasible, any inadvertent disclosures of patient-  
18 identifying information made in testimonial form shall be stricken from the record as soon  
19 as is reasonably practical.

20 7. Defendants do not believe that documents and information  
21 concerning the peer review, quality and/or credentialing processes or proceedings of the  
22 members of the Alta Bates' Medical Staffs will be subject to discovery in this action. If,  
23 however, the Court orders Defendants to produce such Discovery Materials or the  
24 parties stipulate to their production, in whole or in part, then the procedures described  
25 herein shall apply. The identity of the members of Alta Bates' Medical Staffs in  
26 relationship to their having been subject to peer review, quality and/or credentialing  
27 processes or proceedings, shall not be provided or utilized in this litigation, but rather the  
28 Medical Staffs' members names shall be kept confidential and their identities otherwise

1 designated (e.g., Physician A, Physician B, etc.). Counsel shall develop a process to  
2 advise any Medical Staff member whose peer review, quality or credentialing material  
3 could be made part of this lawsuit of such a potential occurrence, so that such affected  
4 persons have the option of taking individual steps to protect their privacy interests.  
5 Notwithstanding the foregoing, Plaintiff does not waive his right to seek discovery at a  
6 later time of the identity of the members of Alta Bates' Medical Staffs in relationship to  
7 their having been subject to peer review, quality and/or credentialing processes or  
8 proceedings. This paragraph does not apply to the identification of Plaintiff who has  
9 already made such identification public. Except for the individuals identified in the  
10 Complaint (whose names shall not be designated as "CONFIDENTIAL") and insofar as  
11 the information is discoverable at all, the names of the members of the Alta Bates'  
12 Medical Staffs who participated in Plaintiff's peer review, quality and/or credentialing  
13 processes or proceedings shall be provided by name, however, those names shall be  
14 designated as "CONFIDENTIAL" under the terms of this Stipulated Protective Order.

15 8. Access to Discovery Materials designated "CONFIDENTIAL" shall  
16 be restricted in accordance with the following provisions:

17 (a) "CONFIDENTIAL" Discovery Materials means information  
18 (other than either "ATTORNEYS' EYES ONLY" designated information or information the  
19 confidentiality of which has not been maintained) designated by a party as  
20 CONFIDENTIAL and which contains, among other things: (1) non-public, proprietary  
21 and/or trade secret information; (2) confidential personnel file information about current  
22 or former Alta Bates employees; (3) confidential private information about members of  
23 the Medical Staffs, including allied health professionals; (4) incident or other reports  
24 leading to or constituting the peer review, quality or credentialing processes or  
25 proceedings; (5) written records and information obtained from any source, reviewed, or  
26 generated relative to, during or immediately after proceedings, investigations or  
27 meetings of an Ad Hoc Committee, the Medical Executive Committee and/or the Medical  
28 Executive Board (the "MEC") or any other committee of the Medical Staffs regarding the

1 peer review, quality or credentialing of the Medical Staffs' members as well as verbal  
2 statements or testimony describing or recounting those Medical Staffs' committee  
3 proceedings, investigations or meetings; (6) information about or concerning a current or  
4 former member (including applicants for membership) of the Medical Staffs which was  
5 submitted, collected, or prepared by any agent or representative of Alta Bates, any other  
6 health care facility, any medical practitioner or any organization of the Medical Staffs for  
7 the purpose of achieving and maintaining quality patient care, reducing morbidity and  
8 mortality, or contributing to clinical research.

9 (b) "CONFIDENTIAL" Discovery Materials and all information  
10 extracted from "CONFIDENTIAL" Discovery Materials shall be used solely for the  
11 purposes of prosecuting or defending this action, and for no other purpose.

12 (c) "CONFIDENTIAL" Discovery Materials produced pursuant to  
13 this Order may be disclosed and made available only to the parties' counsel (and their  
14 staffs); to Plaintiff; to any officer, director, employee or representative of Alta Bates  
15 necessary to aid in the prosecution, defense or settlement of this action; to any trier of  
16 fact or law (and their administrative staffs) in this proceeding, and to any mediator  
17 relative to a mediation session governed by the mediation privilege (as described in  
18 California Evidence Code §§ 1115-1128). Any and all further disclosure of  
19 "CONFIDENTIAL" Discovery Materials shall be governed by the provisions of  
20 subparagraphs (d)-(h) and paragraphs 9-11, below.

21 (d) No copies, extracts or summaries of any "CONFIDENTIAL"  
22 Discovery Materials produced by another party shall be made except by or on behalf of  
23 the parties' counsel; and such copies, extracts or summaries shall also be designated  
24 and treated as "CONFIDENTIAL" Discovery Materials and shall not be delivered or  
25 exhibited to any persons except as provided in this Stipulated Protective Order.

26 (e) All persons who are permissibly shown "CONFIDENTIAL"  
27 Discovery Materials shall be advised of the confidentiality of such material, and certain  
28

1 such persons as specified below, shall sign a copy of Exhibit A acknowledging their  
2 confidentiality obligations.

3 (f) Counsel may allow access to "CONFIDENTIAL" Discovery  
4 Materials produced by another party to consultants (and their staffs), including  
5 consultants designated to testify as expert witnesses, provided that any such consultant  
6 shall first be provided with a copy of this Stipulated Protective Order and shall execute  
7 an undertaking in the form annexed hereto as Exhibit A. Consultants are hereby  
8 specifically advised that their written work product which contains or discloses the  
9 substance of "CONFIDENTIAL" Discovery Materials is subject to all the provisions of this  
10 Stipulated Protective Order. Counsel disclosing "CONFIDENTIAL" Discovery Materials  
11 to consultants shall be responsible for obtaining the executed undertaking in advance of  
12 such disclosure and also shall retain the original executed copy of said undertaking.

13 (g) During depositions, Counsel may question any witness about  
14 "CONFIDENTIAL" Discovery Materials. Any "CONFIDENTIAL" document so referred to  
15 may be marked as an exhibit, but no such "CONFIDENTIAL" document, or any portion  
16 thereof, shall be attached to any publicly-available deposition or other transcript without  
17 the written consent of the party that designated the document as "CONFIDENTIAL."  
18 Portions of deposition transcripts designated "CONFIDENTIAL" shall be so marked.  
19 "CONFIDENTIAL" portions, including exhibits consisting of "CONFIDENTIAL"  
20 documents, shall be bound under seal separately from the non-confidential portions of  
21 the transcript.

22 (h) "CONFIDENTIAL" Discovery Materials shall be deemed  
23 "sealable" in accordance with the provisions of Civil Local Rule 79-5, which provisions  
24 shall apply to any presentation of "CONFIDENTIAL" Discovery Materials, or any  
25 references thereto, relative to any submission to the Court.

26 9. Access to Discovery Materials designated "ATTORNEYS' EYES  
27 ONLY" shall be restricted in accordance with the following provisions:  
28



1 (a) "ATTORNEYS' EYES ONLY" shall mean information (other  
 2 than information either the confidentiality of which has not been maintained or which  
 3 qualifies for "CONFIDENTIAL" treatment only), which falls within the categories  
 4 delineated in (1) through (6) of paragraph 8(a) above and refers to or describes the peer  
 5 review, quality or credentialing processes of members of the Alta Bates Medical Staffs,  
 6 other than Plaintiff. Documents and information may only be designated "ATTORNEYS'  
 7 EYES ONLY" after following the procedures described in subparagraph (b).

8 (b) The parties agree to meet and confer with each other prior to  
 9 the designation of any documents or information as "ATTORNEYS' EYES ONLY"  
 10 pursuant to this Stipulated Protective Order. Before producing the documents or  
 11 information, the designating party shall contact the receiving party and describe  
 12 generally the documents or information it seeks to designate as "ATTORNEYS' EYES  
 13 ONLY". The parties will meet and confer in good faith concerning the designation of  
 14 documents or information as "ATTORNEYS' EYES ONLY" and such meet and confer  
 15 shall last no longer than 5 court days. If the parties agree, the documents or information  
 16 may be designated and treated as "ATTORNEYS EYES' ONLY" documents or  
 17 information under this Stipulated Protective Order. If the parties disagree, the  
 18 designating party shall file a motion for protective order concerning the designation  
 19 dispute and the court will determine whether the documents or information at issue  
 20 warrant heightened protection. Such motion shall be filed within 5 court days of the  
 21 completion of the meet and confer process described herein.

22 (c) "ATTORNEYS' EYES ONLY" Discovery Materials and any  
 23 information summarized or extracted therefrom shall be used solely for the purposes of  
 24 prosecuting or defending this action, and for no other purpose.

25 (d) "ATTORNEYS' EYES ONLY" Discovery Materials shall be  
 26 disclosed only to counsel for the parties (including their staffs), and to consultants (and  
 27 their staffs), including consultants designated to testify as expert witnesses who execute  
 28 Exhibit A. Insofar as "ATTORNEYS' EYES ONLY" Discovery Materials constitute



documents or information concerning the record of peer review, quality or credentialing processes or proceedings of Alta Bates or of its Medical Staffs, or of incident or other reports leading to such peer review, quality or credentialing processes or proceedings, such "ATTORNEYS' EYES ONLY" Discovery Materials may also be disclosed to witnesses who participated in the peer review, quality or credentialing processes or proceedings that are the subject of said Discovery Materials and who also execute Exhibit A. Insofar as such consultants or witnesses refer to or rely upon documents or information protected from disclosure by Section 1157, their testimony, declarations and reports also will be protected from disclosure in this action. Plaintiff makes no concessions concerning the application of Section 1157 to protect documents or information from disclosures in this action.

(e) No copies, extracts or summaries of any "ATTORNEYS' EYES ONLY" Discovery Materials produced by another party shall be made except by or on behalf of the parties' counsel; and such copies, extracts or summaries shall also be designated and treated as "ATTORNEYS' EYES ONLY" Discovery Materials and shall not be delivered or exhibited to any persons except as provided in this Stipulated Protective Order.

(f) "ATTORNEYS' EYES ONLY" Discovery Materials shall be deemed "sealable" in accordance with the provisions of Civil Local Rule 79-5, which provisions shall apply to any presentation of "CONFIDENTIAL" Discovery Materials, or any references thereto, relative to any submission to the Court.

10. The disclosure of any Discovery Materials pursuant to the terms of this Stipulated Protective Order is not intended to be and shall not be construed as a waiver of any right or a relinquishment of any confidentiality or privilege claim as to said Discovery Materials or as a waiver of any claim that the information disclosed is a trade secret or is proprietary.

11. If any dispute arises concerning whether documents or information designated as "CONFIDENTIAL" should in fact be considered "CONFIDENTIAL" for

1 purposes of this Stipulated Protective Order, then the parties shall try first to resolve  
2 such dispute in good faith on an informal basis. The receiving party shall initiate a meet  
3 and confer teleconference within ten (10) calendar days of the date the Discovery  
4 Materials were served by the producing party. The parties shall complete their meet and  
5 confer discussions within five (5) calendar days and no longer. If the parties disagree,  
6 the designating party shall file a motion for protective order concerning the designation  
7 dispute and the court will determine whether the documents or information at issue  
8 warrant protection under the terms of this Stipulated Protective Order.

9           12. Upon final resolution of this litigation, including any appellate  
10 proceedings or expiration of the time allowed for appeal, counsel for each party shall  
11 return all Discovery Materials marked "CONFIDENTIAL" or "ATTORNEYS' EYES ONLY"  
12 received hereunder, including all copies thereof, to counsel for the party that produced  
13 said materials. Such returned materials shall include any such "CONFIDENTIAL" or  
14 "ATTORNEYS' EYES ONLY" documents in the possession of consultants retained by  
15 that counsel. Such return shall occur within 30 days of dismissal or final resolution of the  
16 action. Counsel shall be permitted to retain for their work product and privileged files  
17 (i) copies of all papers and documents filed with the Court, and (ii) their work product,  
18 such as pleadings, correspondence, and memoranda, which contain or refer to  
19 "CONFIDENTIAL" or "ATTORNEYS' EYES ONLY" Discovery Materials.

20           13. Nothing contained in this Stipulated Protective Order shall preclude  
21 any party from seeking or obtaining, upon an appropriate showing, additional protection  
22 with respect to any documents, information, or other Discovery Materials. Nothing  
23 contained herein relieves any party of its obligation to respond to discovery properly  
24 initiated pursuant to the Discovery Order.

25           14. The Court may modify this Stipulated Protective Order at any time or  
26 consider any dispute which may arise hereunder upon motion of any of the parties.  
27  
28

1           15. This Stipulated Protective Order shall remain in effect for the  
2 duration of the action unless terminated by stipulation or pursuant to Court order. The  
3 Stipulated Protective Order shall survive the final termination of this action, and the Court  
4 shall retain jurisdiction to enforce, construe or modify its terms.

5  
6 **I HEREBY ATTEST THAT THE CONTENT OF THIS DOCUMENT IS ACCEPTABLE  
TO ALL PERSONS REQUIRED TO SIGN THIS DOCUMENT.**

7 DATED: May 23, 2007

KAUFF McCLAIN & McGUIRE LLP

8  
9 By: /S/ Matthew P. Vandall  
10 MAUREEN E. McCLAIN  
11 ALEX HERNAEZ  
MATTHEW P. VANDALL

12 Attorneys for Defendants  
13 ALTA BATES SUMMIT MEDICAL  
14 CENTER; RUSSELL D. STANTEN, M.D.;  
LEIGH I.G. IVERSON, M.D., STEVEN A.  
STANTEN, M.D.; and WILLIAM M.  
ISENBERG, M.D. Ph.D.

15  
16 DATED: May 23, 2007

MOSCONE, EMBLIDGE & QUADRA, LLP

17  
18 By: /S/ Rachel J. Sater  
19 G. SCOTT EMBLIDGE  
RACHEL J. SATER  
ANDREW SWEET

20 Attorneys for Plaintiff  
21 COYNESS L. ENNIX, JR., M.D.

22 **IT IS SO ORDERED.**

23 DATED: \_\_\_\_\_, 2007  
24  
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26 \_\_\_\_\_  
United States District Court Judge  
27  
28